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Colorado General Assembly

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MEMORANDUM

TO: Kathleen Curry and Toni Larson

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: September 18, 2017

SUBJECT: Proposed initiative measure 2017-2018 #48, concerning Constitutional State Legislative Redistricting

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To stop political gerrymandering;

2. To change the name of, the number of members of, the qualifications for, and the manner of appointing members to the commission that redraws state legislative districts (the "Commission");
3. To specify that in drawing districts, the Commission must comply with the federal "Voting Rights Act of 1965" and, after complying with all other requirements, must maximize the number of competitive districts and not draw plans to purposefully advantage or disadvantage any political party or person;
4. To authorize the Commission to adopt rules;
5. To specify that the Commission is subject to the "Colorado Open Records Act"; except that maps not submitted to the Commission are not public records, but that work product and communications between staff are public records once a plan is submitted to the supreme court;
6. To provide that the Commission is subject to the open meetings provisions of part 4 of article 6 of title 24, C.R.S.;
7. To prohibit:
 - a. Communications concerning Commission business outside of a public meeting involving three or more commissioners;
 - b. Communications between commissioners and the Commission staff concerning plans unless during a public meeting; and
 - c. Communications by Commission staff concerning any plan outside of a public meeting except with other staff members;
8. To require:
 - a. Any person who receives compensation for advocating to the Commission or its members to be deemed a professional lobbyist and subject to laws relating to professional lobbyists; and
 - b. At least eight affirmative votes from Commissioners for the adoption of any motion of the Commission;
9. To require staff to present at least four plans prior to the Commission's consideration of a preliminary plan;
10. To allow for public comment during the development of plans;
11. To require the Commission to adopt a preliminary plan by a date specified, or staff's fourth plan is deemed the preliminary plan;

12. To conduct public hearings throughout the state, but authorizing remote hearings technology to be utilized for certain hearings;
13. To require the Commission to finalize and submit its plans to the Colorado Supreme Court by the date specified in the constitution, or the preliminary plan is submitted to the court as the final plan;
14. To provide that the supreme court reviews the final plans for compliance with constitutional requirements and may return a plan to the Commission for changes; and
15. To specify that if the Commission fails to adopt a new plan after return from the supreme court, staff is to submit a revised plan that conforms to the court's requirements.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. Could two or more of the independent members of the Commission be from the same minor political party? If so, would that impact the independent balance of the Commission?
4. The panel is to recommend applicants that it finds to be most qualified. What skills, knowledge, or experience do the proponents believe makes a person more or less qualified?
5. The measure provides that political parties make appointments to the Commission. How do the proponents envision this happening? Would the proponents consider specifying a person, such as the state chair of the party or other person designated by the party, to clarify who makes appointments for the party?
6. For the initial six appointments by the political parties, is a person west of the continental divide ineligible for appointment if a member has been previously appointed from that person's congressional district? Or is it the intent of the proponents that the "geographic areas" described in the measure constitute

separate areas from which a member may be appointed distinct from congressional districts?

7. If an applicant is removed by commissioners from a political party during the process to ensure that there is a member from each congressional district and geographic area described in section 48 (6)(h)(II), may that applicant be included in the applicants considered without regard to congressional district or geographic area as described in section 48 (6)(h)(III)?
8. For purposes of determining the two largest political parties, should the secretary of state count both active and inactive registered electors?
9. If this measure and proposed initiative 2017-2018 #50 both pass, could the same staff be assigned to both commissions?
10. The "State Administrative Procedures Act", article 4 of title 24, C.R.S., establishes procedures that a commission must follow when adopting rules. Is it the proponents' intent that the Commission comply with that act when adopting its rules?
11. If an independent commissioner is removed from office, who is the appointing authority and how is his or her replacement selected?
12. The measure provides that "Work product and communications between commission staff are subject to disclosure once a plan is submitted to the supreme court." Do the proponents intend that all work product and communications of the staff are subject to disclosure once the plan is submitted or only work product and communications related to the final plan?
13. Under the measure, would a professional journalist writing an editorial urging the Commission to adopt a certain plan or provision be considered a professional lobbyist?
14. Previous Commissions have divided the state into regions and held public hearings on each region before looking at preliminary plans for each region. Do the proponents anticipate that there will be similar hearings before the staff prepares its initial preliminary plan?
15. Is it the proponents' intent that staff will prepare an initial preliminary plan that will be submitted to the Commission, be subject of a hearing at which commissioners may suggest changes to that initial plan, and that based on suggested changes staff will then prepare a second plan that is again subject to submission to the Commission and another hearing, so that ultimately the

Commission will have considered not less than four staff-submitted plans before the Commission votes on a preliminary plan?

16. If the Commission votes to amend a staff plan, is staff required to include that amendment in its next plan?
17. If the Commission considers an amendment to a staff plan but does not affirmatively vote to adopt the amendment, may staff include the amendment in its next plan?
18. When a member or group of members requests staff to prepare a new plan or an amendment to a plan at a public meeting, do the proponents anticipate that such a plan or amendment may be in an electronic format or just a description of the plan or changes requested?
19. If the Commission convenes on May 14, 2021, the last day to approve a preliminary plan would be September 3, 2021. If a preliminary plan is not approved by the Commission by that date, and public hearings are held for the following forty-five days, the Commission would only have nine days after the public hearings to consider, approve, and have the final plan submitted to the supreme court. Do the proponents believe that this is sufficient time for the Commission to accomplish this?
20. In order to avoid sliver precincts—that is, precincts that must be created because lines for congressional and state legislative districts are close but do not match—staff for previous commissions have altered Commission plans based on the final congressional redistricting plan. If both this initiative and Initiative 2017-2018 #50 are adopted, may staff for both Commissions communicate with one another about plans to avoid sliver precincts?
21. Do the proponents believe that fifty-five days is sufficient time for county clerks to redraw precinct boundaries, potential candidates to know what district in which they reside, and voters become familiar with the candidates prior the precinct caucuses?
22. Under section 1-40-105.5, C.R.S., the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?

- b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
- c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Active voice should be used in drafting whenever possible, to accurately identify the actor responsible for an outcome.
2. OLLS has recently updated how it drafts internal references in statute:
 - a. Part, article, and title numbers should be added when making internal references (e.g., "section 46 (2) of this article V" rather than "section 46 (2) of this article" or "as used in this title 2" rather than "as used in this title").
 - b. Subsections of statute are now referred to directly (e.g., "subsection (6)(b) of this section" rather than "paragraph (b) of subsection (6) of this section").
 - c. When referring to a section, part, article, or title within the Colorado Revised Statutes, it is not necessary to include "C.R.S." at the end of the cite.
3. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate.
 - a. The following should be large-capitalized:
 - i. The first letter of the first word of each sentence; [see 48.3 (6)(b)]
 - ii. The first letter of the first word of each entry of an enumeration paragraphed after a colon; [see 48 (4)(b)(I) and (II)] and

- iii. The first letter of proper names.
- b. You do not need to large capitalize the following:
 - i. "County" in "El Paso county".
 - ii. "Continental Divide".
- 4. Numbers should be written out, rather than using digits. [See 48.3 (10) and 48.5 (1)(a)]
- 5. It appears that the cross reference at the end of subsection 48 (8) should be "48.3 (9) of this article".
- 6. Section 48 (5) does not conform with standard drafting practices. The initial language in the section appears to be an introductory portion before (a) through (d). However, it does not end with a colon indicating that it is an introductory portion. Either it should be rewritten so that it ends with a colon, or that language should be in a paragraph (a) and the subsequent paragraphs relettered.